

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10071 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? no
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

RAMBHAI JOITARAM PATEL

Versus

STATE OF GUJARAT

Appearance:

MR BA VAISHNAV for Petitioner
MR PK JANI for Respondent No. 1, 5, 6
SERVED BY DS for Respondent No. 2
MR JAL SOLI UNWALA for Respondent No. 4

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 06/11/96

C.A.V JUDGEMENT

This Special Civil Application under Article 226 of the Constitution of India has been filed seeking direction to quash and set aside Resolution dated 14.11.1995 whereby motion of no confidence has been carried out ousting the petitioner from the office of the Sarpanch.

2. Admitted facts of the case are that the petitioner was elected Sarpanch of the Village Panchayat Satlasna in Kheralu Taluka of Mehsana District. The total number of members of the Panchayat is 15. Two seats of the members are vacant. 8 members of the Panchayat gave notice of motion of no confidence against the petitioner-sarpanch. The meeting to consider the motion was convened on 14.11.1995 in accordance with the provisions of section 56 of the Gujarat Panchayats Act, 1993 (hereinafter referred to as 'the Act of 1993'). As the motion was against the petitioner, respondent No.3, a member of the Panchayat presided the meeting. Out of 13 members, 9 members voted in favour of the motion and 4 voted against. It was, therefore, declared that motion of no confidence has been carried as per the provisions of section 56 (2) of the Act of 1993. The petitioner challenged the said Resolution before the District Panchayat on the ground that the motion was short of one vote as on true construction of the words two-third of "total number of members of the Panchayat" under section 56(2) means full strength of the Panchayat including vacancy i.e. 15 members and as such for carrying the motion, 10 members were required to vote in favour of the motion. The Appellate committee admitted the appeal on 16.11.1995 and directed to stay operation of the impugned resolution and to maintain status-quo till the final disposal of the appeal. Respondent No.3 preferred Revision Application before the respondent-State under section 259 of the Act. The respondent State, by order dated 29.1.1995, ordered stay of the operation of the order dated 16.11.1995 of the appellate committee. The petitioner initially challenged the order dated 16.11.1995 of the appellate committee. Subsequently, by way of amendment, the the petitioner has also challenged the resolution dated 14.11.1995. This Court, by order dated 11.4.1996, while allowing the aforesaid amendment, also granted permission to the petitioner to withdraw appeal No.37/95 pending before the District Panchayat.

3. It is contended by the learned Advocate for the petitioner that the words "total number of members of the Panchayat" occurring in sub-section (2) of section 56 means the total number of members who initially constituted the Board and consequently existence of any casual vacancy of a particular time is irrelevant for calculating the total number of members for the purpose of sub-section (2) of section 56 of the Act of 1993. The learned Advocate relies on a Full Bench decision of the Allahabad High Court in the case of Mangala Prasad v. District Magistrate & Ors., reported in AIR 1971 Allhd. 77 and in the case of Shyamapada Ganguly v. Abani Mohan

Mukherjee, reported in AIR 1951 Cal.420. On the other hand, the contention of the learned Advocate for the respondent is that "the total number of members of the Panchayat", as occurring in section 56(2) of the Act of 1993, means "total number of members of the Panchayat who are entitled to sit and vote at the time of motion of no confidence. The Learned Advocate relies on a Full Bench decision of the Bombay High Court in the case of Namdeorao Madhvrao v. Dulaji, reported in 70 BLR 843. Thus, the question which arises for consideration is what is the true construction of words "total number of members of the Panchayat" occurring in section 56(2) of the Act of 1993 ?

4. In order to better appreciate the question raised, it would be necessary to acquaint with the relevant provisions of the Panchayats Act of 1993, more particularly, the constitution of Panchayats which has a material bearing on the controversy. In each district, there are Panchayats at - a village level known as Gram Panchayat. A Taluka Panchayat for each Taluka and a District Panchayat for each district. Section 9 provides for the constitution of village panchayats. A village panchayat consists of such number of members as provided in sub-section (4). The members of the village panchayats are elected from the qualified voters of the village. The Sarpanch of the Panchayat is also elected by ballot by qualified voters of the village from amongst themselves or to say that the Sarpanch is elected by direct election. Sub-clause (5) of section 9 provides for the reservation. For the sake of convenience, relevant portion of section 9, which deals with the constitution of Village Panchayat is reproduced as under:

"9. Constitution of Village Panchayats.- (1) A village panchayat shall consist of such number of members as provided in sub-section (4);

(2) The members of a village panchayat shall be elected from amongst the qualified voters of the village;

(3)(a) A village Panchayat shall have a Sarpanch and an Upa Sarpanch

(b) The Sarpanch shall be elected by ballot by the qualified voters of the village from themselves.

(c) The Upa Sarpanch shall be elected by the members of the village Panchayat from

amongst themselves

- (4) A village Panchayat of a village having population not exceeding three thousand shall consist of seven members and in case of a village panchayat where the population of the village exceeds three thousand, then for every one thousand or part thereof in excess of three thousand, the said number of seven shall be increased by two.

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5. Section 10 provides for the constitution of Taluka Panchayat. A Taluka Panchayat shall consist of elected members as provided in sub-section (4). The elected members of the Taluka Panchayats are elected from amongst the qualified voters of Taluka. The President and a Vice-President of the Taluka Panchayat are elected by its elected members from amongst themselves. It is thus evident that the President and the Vice President of the Taluka Panchayat are not elected by direct election like Sarpanch. Sub-clause (5) of section 10 provides for reservations. Section 10 reads as under:

"10. Constitution of taluka Panchayats - (1) A taluka Panchayat shall consist of elected members as provided in sub-section (4)

(2) The elected members of a taluka panchayat shall be elected from amongst the qualified voters of the taluka,

(3) A taluka panchayat shall have a president and vice president elected by its elected members from amongst themselves.

(4) A taluka panchayat of a taluka having population not exceeding one lakh shall consist of fifteen members and in case of a taluka panchayat where population of the taluka exceeds one lakh, then for every twenty five thousand or part thereof in excess of one lakh, the said number of fifteen shall be increased by two.

(5)(a)(1) Seats shall be reserved by the State Government for the Scheduled Castes and Scheduled Tribes in every taluka panchayat in the State and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct

election in that panchayat as the population of the scheduled Castes in the taluka or as the case may be, of the Scheduled Tribes in the taluke bears to the total population in the taluka and such seats shall be allotted by the State Election Commission by rotation to different territorial constituencies in that taluka in the prescribed manner.

(ii) One tenth of the total number of seats in a taluka panchayat shall be reserved by the State Government for socially and educationally backward classes and such seats shall be allotted by the State Election Commission by rotation to different territorial constituencies in that taluka in the prescribed manner.

(b) One third of the total number of seats reserved under clause (a) shall be reserved by the State Government for women belonging to the Scheduled Castes, the Scheduled Tribes or as the case may be socially and educationally backward classes.

(c) one third (including the number of seats reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and socially and educationally backward classes) of the total number of seats to be filled by direct election in a taluka panchayat shall be reserved by the State Government for women and such seats shall be allotted by the State Election Commission by rotation to different territorial constituencies in taluka in the prescribed manner.

(6) Members of the Gujarat Legislative Assembly elected from any constituency in the taluka or a part thereof, shall be permanent invitees to such taluka panchayat, but such invitees shall not have the right to vote in the meetings of the Taluke Panchayat;

provided that when a person ceases to be
a member of the Gujarat Legislative
Assembly, he shall cease to be a
permanent invitee to the Taluka Panchayat

Explanation - For the removal of doubts, it is hereby clarified that status of a permanent invitee shall not be construed to be that of a member of the Taluka Panchayat referred to in clauses (3) and (4) of article 226 of the

Constitution of India."

6. Section 11 provides for constitution of District Panchayat. It consists of elected members as provided in sub-section (4). The members of the District Panchayats are elected from amongst the qualified voters of the District. The President and Vice-President of the District Panchayats are elected by the elected members from amongst themselves. It is thus, evident that the President and Vice-President of the District Panchayats are also elected in the manner as provided for the Taluka Panchayat, but different from that of the Sarpanch of the Panchayat. Relevant portion of Section 11 reads as under:

"11. Constitution of District Panchayats - (1) A District Panchayat shall consist of elected members as provided in sub-section (4).

(2) The elected members of a district Panchayat shall be elected from amongst the qualified voters of the district.

(3) A district panchayat shall have a president and a vice-president elected by its elected members from amongst themselves.

(4) A district panchayat of a district having population not exceeding four lakhs shall consist of seventeen members and in case of a district panchayat where the population of the district exceeds four lakhs, then for every one lakh or part thereof in excess of four lakhs, the said number of seventeen shall be increased by two."

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Sub-section (2) of section 56 provides that the motion against the Sarpanch or the Upa-Sarpanch for no confidence can be carried by majority of not less than two thirds of the total members of the members of the panchayat. Sub-section (2) of section 56 reads as follows:

"(2) Where in the case of the Sarpanch or, as the case may be, the Upa Sarpanch, the motion is carried by a majority of not less than two-thirds of the total number of the members of the panchayat, the Sarpanch or, as the case may be, the Upa-Sarpanch, shall cease to hold office after a period of three days from the date on which the motion is carried unless he has

resigned and the resignation has become effective earlier, and thereupon the office held by him shall be deemed to have become vacant."

Section 70 provides for the motion of no confidence against the President or vice-president of Taluka Panchayat. Sub-clause (2) of section 70 provides that if the motion against the president or vice-president is carried out by majority of members not less than two-thirds of the total number of "the then" members of the Panchayat. Sub-section (2) of section 70 reads as under:

"(2) If the motion is carried by a majority of not less than two-thirds of the total number of the then members of the panchayat, the President or the Vice-President, as the case may be, shall cease to hold office after a period of three days from the date on which the motion is carried, unless he has resigned earlier; and thereupon the office held by such President or Vice-President shall be deemed to be vacant."

7. Section 84 provides for the motion of no confidence against the president or vice-president of the District Panchayat. Sub-clause (2) of section 84 provides that motion of no confidence can be carried against the president or the vice-president by majority of not less than two-thirds of the total number of "the then" members of the Panchayat. Sub-section (2) of section 84 is reproduced as under:

"(2) If the motion is carried by a majority of not less than two-thirds of the total number of the then members of the panchayat, the President or Vice-President, as the case may be, shall cease to hold office, after a period of three days from the date on which the motion was carried unless he has resigned earlier, and thereupon the office held by such President or Vice-President shall be deemed to be vacant."

It is thus seen that different expressions are being used in case of motion of no confidence against a Sarpanch of a Gram Panchayat and President or Vice-President of the Taluka or District Panchayat. In case of motion of no confidence against a Sarpanch of a Gram Panchayat, under sub-section (2) of section 56, the expression used is "the total number of the members of the Panchayat", whereas under section 70 (2) and 84(2), the expression used is total number of "the then" members of the Panchayat for vote of no confidence against a President or Vice-President of Taluka Panchayat or District Panchayat. The use of two different expressions at

different places in the same statute clearly indicates that they have different connotations. It must be presumed that the legislature has used the different expressions at different places with different intentions. The word, "the then" used in section 70(2) and section 84(2) are of significance. It refers to "particular time with certain object." The total number of "the then" members of the panchayat can only mean the total number of members entitled to sit and vote for no confidence at the time of motion of no confidence. The legislature, presumably, with a view to give greater protection to a Sarpanch who is elected by direct election has not used the word "the then" and has only said the total number of members of the panchayat, which means the total members of the panchayat taking into account the vacancy or the total number of members of the constituted panchayat in accordance with section 9 (4) of the Act 9 of 1993. It may be noticed that while the Sarpanch, as provided in section 9(3) (b), is elected by qualified voters of the Village i.e. by direct election, the President or vice-President of the Taluka and District Panchayat as well as District Panchayat are elected under section 10(3) and 11(3) respectively from amongst the elected members of the Taluka Panchayat or the District Panchayat, as the case may be, i.e. by indirect election. It is thus evident that while the Sarpanch of the Gram Panchayat is elected by direct election, President and Vice-President of the Taluka Panchayat are elected by indirect election and as such different expressions have been used for consideration of motion of no confidence in case of a Sarpanch of the Gram Panchayat and in case of President or Vice-President of a Taluka or District Panchayat. As the Sarpanch is directly elected by the villagers, a greater protection has been provided to the Sarpanch by using the word "total number of members" of the Panchayat, instead of using the words total number of "the then" members of the Panchayat.

8. In the case of Shyamapada Ganguly (supra), reported in AIR 1951 Cal. 420, at a special meeting convened upon requisition of 11 commissioners to consider a resolution for removal of the Chairman of the Municipality, 11 commissioners voted for the Resolution, 3 voted against and 2 were absent. The said Resolution was challenged on the ground that by virtue of section 16 (2) of the Bengal Municipal Act, 1932, the Municipality constituted of 17 Commissioners and in accordance with the provisions of section 16 (2), a motion of no confidence against the Chairman could be carried out only by two-thirds members of the whole members of the

Commissioners. The Court held that the whole number of Commissioners used under section 61(2) of the Act refers to the total number of elected seats in the Municipality and the fact that the seat is declared vacant by the Government does not matter. It was found that out of 17 being the whole number of Commrs. and hence the motion of no confidence cannot said to have been carried by 11 Commrs.

9. In the case of Mangala Prasad (supra), reported in AIR 1971 Allh. 77, the Town Area Committee consisted of 10 members including the Chairman. There existed a vacancy on account of death of one of the members. A motion of no confidence was carried against the Chairman by majority of 5 members. The said Resolution was challenged and it was contended that the expression "the total number of members of the Committee" used in section 87 A (12) of the U P Municipalities Act as applied to the Town Area means the total strength of the Town Area Committee and not the present strength thereof. The Full Bench, considering the legislative history and further considering the different expressions used under section 47 A (12) and sub clause (13) held that the word "the total number of members of the Committee embodied in section 87 A (12) means the total number of members initially constituted the committee and not the members for the time being and consequently the existence of any casual vacancy of a particular time is irrelevant for the purpose of sub-section (12).

10. Before the Bombay High Court, in the case of NAMDEORAO MADHAVRAO V. DULAJI, reported in 70 BLR 843, an identical expression "the total number of Councillors" contained in section 49(7) of the Zilla Parishad Act came up for consideration. The Court held that the expression " the total number of Councillors (other than Associate Councillors)" which occurs in sub-section (7) of Section 49 of the Act means the actual number of Councillors other than associate councillors who are for the time being entitled to sit and vote at the time of motion of no confidence. A reading of the judgment shows that on the analysis of the constitution of the Zilla Parishad, it was found that it consists of number of councillors which is never certain. It is a body with a fluctuating councillorship. Even before the election, it would be difficult to say what is the total number of councillors of the Zilla Parishad or its total membership. In this view of the peculiar composition of the Zilla Parishad, in the opinion of the Court, it was difficult to say that it is composed of definite number of councillors. The Full Bench also found that by constitution there occurs

an overlapping of seats. For instance one individual occupies two seats i.e. in the case of a woman elected as a councillor. In view of this, the Court found that the provision refers to not the "total number of councillors" but in fact the seats. The court itself found that the expression "total number of members" with a total membership of the body would normally apply to those bodies which by their constitution have fixed their membership. It is not in dispute that in the case of Gujarat Panchayats Act, there is fixed membership of the Panchayat. In view of this, the Full Bench decision of the Bombay High Court has no application to the facts of this case.

11. In the instant case, the total membership of the Gram Panchayat Satlasna is 15. Thus, two-thirds number of members of the Panchayat shall be 10. Therefore, the motion of no confidence by 9 votes cannot be said to have been carried. In view of this, Resolution dated 14.11.1995 is ex-facie illegal and void and it deserves to be quashed and set aside.

12. In the result, this Special Civil Application succeeds. The impugned resolution dated 14.11.1995 Annexure 'B' is hereby quashed and set aside.

Rule made absolute accordingly with no order as to costs.

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FURTHER ORDER

Mr P K Jani, learned Advocate appearing for respondent No.3 submits that this order may not be given effect to for a period of two weeks. This prayer is being opposed by Mr B A Vaishnav, learned Advocate for the petitioner. He submits that the term of the Panchayat is expiring shortly and if the order is not given effect to, he will be deprived of the fruits of the order.

Considering the fact that the petitioner is already out of office for a considerable period, this order will not be given effect upto 19th November, 1996 .

Date: 06.11.1996

(N N MATHUR, j.)

